IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10716 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PAN PIPES RESPLENDENTS LTD

Versus

STATE OF GUJARAT

Appearance:
M/S TRIVEDI & GUPTA for Petitioners
MR RC KODEKAR, AGP for Respondents

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 27/12/2000

CAV JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the Constitution, M/s Pan Pipes Resplendents Ltd. (petitioner No. 1 and hereinafter referred to as "the petitioner") engaged in printing and decorating duty paid ceramic glazed tiles purchased from various manufacturers have challenged the denial of the registration certificate as well as the eligibility certificate for availing the benefits under the Sales Tax Incentives Scheme as contained in the Government Resolution dated 16.10.1990 (Annexure "C") and have also challenged the coercive steps being taken by the authorities under the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Sales Tax Act").

2. The facts leading to filing of this petition, brief stated and as averred by the petitioners, are as under:-

2.1 The State Government had issued Resolution dated 16.10.1990 (Annexure "C") providing sales tax incentives to industrial units to attract investment and to generate great employment in industrially less developed and rural areas with a view to secure balanced development of industries in Gujarat through dispersal of industries in remote and less developed areas. It was known as "The Sales Tax Incentives Scheme for Industries - 1990-95" and was to remain in force upto 15.8.1995. The "eligible industries" covered by the scheme were as under :-

> "(xii) Eligible Industries :- (1) Industries listed in first schedule of the Industries (Development and Regulation) Act, 1951 as amended from time to time, requiring licence/registration. (2) Tiny and small scale industries as defined in the Industries (Development and Regulation) Act, 1951 as amended from time to time and eligible for registration with the Commissioner of Industries."

The industries listed in Annexure "B" to the resolution were classified as ineligible industries. Annexure "A" to the resolution specified the names of the talukas considered as eligible talukas for the purposes of the scheme.

The eligible units were offered the option to choose either sales tax exemption or sales tax deferment, but in any case were required to pay turn over tax. The resolution contained the details about the procedure and the terms and conditions which would be applicable when the Government grants the incentives.

2.2. The petitioner entered into an agreement dated 17.5.1995 for the purchase of agricultural land at village Mahuva, Tal. Padra in District Vadodara with the owner of the agricultural land. However, since the sale of agricultural land to a non-agriculturist without permission of the Collector is prohibited, the necessary application was made for grant of permission to sell the agricultural land in question to the petitioner for industrial purposes and by his order dated 20.7.1995 (Annexure "E"), the Assistant Collector, Vadodara granted the permission under Section 63 of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as "the Tenancy Act") read with Rule 30 of the Rules thereunder. The petitioner purchased the land by registered sale deed on 17.8.1995. In the meantime on 1.8.1995, the petitioner submitted its application (Annexure "A" colly.) in the prescribed from with all the details for the grant of eligibility certificate for obtaining sales tax incentives under the aforesaid Government Resolution dated 16.10.1990. The petitioner also submitted the application (Industrial Entrepreneur Memorandum i.e. IEM) dated 7.8.1995 (pg. 248) with the Secretariat for Industrial Approval (SIA). On 8.8.1995, the petitioner also addressed a letter (Annexure "G" pg. 116) to the General Manager & Joint Industries Commissioner, Vadodara informing him about the execution of sale deed dated 7.8.1995 for the land as well as possession thereof and extract of the registration index. On 14.8.1995 (pg. 55), the petitioner informed the General Manager, District Industries Centre, Vadodara that the proposed investment of Rs.12.89 Crores in the project was likely to go up to Rs.19.50 Crores and the petitioner also submitted revised subsidy registeration form on that basis.

2.3 When the validity period of the incentive scheme 1990-95 came to expire on 15.8.1995 by efflux of time, the Entrepreneurs and Industries Associations made representations that the incentives under the 1990-95 scheme were available to those eligible units which commenced commercial production by 15.8.1995, but there were many entrepreneurs and industries which had during the last few months of the operation period of the scheme taken initial steps for investment, but the scheme would become inoperative before they could go into commercial production and, therefore, the time for going into commercial production should be extended. Accordingly, the Government extended the time limit depending on the amount of investment e.g. in case of units with investment above Rs. 10 Crores and upto Rs.100 Crores,

the date for commencement of commercial production was extended upto 15.2.1997. They were to be known as pipeline cases but the benefit of this extension was to be available provided, inter alia, the unit had taken the following steps :-

"Effective Steps :-

(1) The industrial unit shall have obtained Letter of Intent/Letter of permission or SSI registration or obtained acknowledgment against filling of IEM before 15.08.1995.

(2) Unit shall have obtained possession of Plot or shed in GIDC Estate or shall have acquired land transferred in its name and got it converted for Non-Agriculture use for industrial purpose before 15-08-1995 or shall have applied for N.A. before 15.05.1995.

(3) The unit shall have got registration or applied for provisional registration to the Industries Commissioner on or before 15.08.1995, if extension is sought under Resolution No. 3, 4, 7 & 7(A) of 1990-95 scheme."

2.4 On 9.5.1996, the Taluka Development Officer, Padra ("the TDO" for short) granted the petitioner permission under the Bombay Land Revenue Code for non-agricultural use of the land (pg. 78). The petitioner Company purchased indigenous and imported machinery worth Rs.4.92 crores in December, 1996 January, 1997 and by that period the petitioner also completed the construction of the factory building and electrical installation at the cost of Rs.3.30 crores. On 12.2.1997, the petitioner commenced commercial production with an investment of Rs.8.30 crores, as against the projected investment cost of Rs.19.50 crores. It is averred that the petitioner has concrete plans to invest the remaining amount in phased manner in the aforesaid project during the incentive eligibility period. The petitioner was pursuing the matter with the respondents for availing the benefits under the Sales Tax incentive scheme pursuant to its application dated 1.8.1985, but the Industries Commissioner (respondent No. 2) sent his reply dated 23.4.1997 (Annexure "G") stating that the

petitioner's case was not eligible as a pipeline case under the 1990-95 scheme for the following reasons :-

"(1) the unit had applied to the Taluka Development Officer, Padra for the non-agriculture permission on dt. 7.3.96 which is after 15.08.95 that is after the completion of the scheme so as per the notification of 09.11.95 it does not have the eligibility.

(2) The unit having started production after 15.08.95 under 90-95 scheme is not eligible for entitlement of subsidy.

(3) As the unit has applied for sales tax incentive for pipeline case under the 90-95 scheme after 31.01.96, it is not eligible as per the rules."

2.5 When the petitioner pursued the matter with the authority, the Industries Commissioner again reiterated the reasons for the negative reply as per his reply dated 19.8.1997 (pg. 121). It appears that the petitioner went on pursuing the matter with the Industries Commissioner for the necessary registration and eligibility certificate by making several representations and reminders in the year 1997-1998.

2.6 The State Government issued Resolution dated 17.7.2000 extending the time limit by 30.9.2000 for making an application for the industrial units for being treated as pipeline cases under the Government Resolutions dated 16.10.1990 read with 9.11.1995.

2.7 On 4.3.1999, the officers from the Sales Tax Department visited the petitioner's factory and compelled the petitioner to issue a cheque for Rs.36.38 lacs towards undetermined/unassessed amount of local sales tax and Central sales tax.

2.8 On 20.7.2000, the Assistant Sales Tax Commissioner, Vadodara issued order under Section 48(A) of the Gujarat Sales Tax Act for the provisional attachment of the petitioner Company's land and documents of title thereof. That is what impelled the petitioner to approach this Court for claiming the benefits of the sales tax incentive scheme by invoking the doctrine of promissory estoppel and contending that rejection of the petitioner's application for the sales tax incentives was

illegal, since the application was erroneously rejected by the authorities without taking into account the real object of the scheme and the object of granting concession to pipeline cases.

3. In response to the notice issued by this Court, affidavit-in-reply dated 22.11.2000 has been filed by General manager & Joint Commissioner of Industries, District Industries Centre, Baroda and affidavit in reply dated 17.11.2000 has been filed by the Sales Tax Officer (I), Division II, Vadodara reiterating the grounds which were earlier mentioned in the impugned letters dated 23.4.1997 and 19.8.1997. Alongwith the said reply affidavit, copy of the Government Resolution dated 17.7.2000 (pg. 239) has also been produced by which the time limit for submitting applications for pipeline cases was extended till 30.9.2000 in the following terms :-

"The State Government had announced various schemes for sales tax incentives under incentive policy 1990-95 vide Government Resolution referred to in the preamble on Sr.No. 1 to 10. Under the Government Resolution, Industries & Mines Department dated 9.11.1995 referred to in the Preamble at Sr.No. 12 had announced that the units eligible and desiring to avail the sales tax incentives under incentive policy, 1990-95 with an extended date to go into commercial production should make an application with the Industries Commissionerate or respective District Industries Centres applicable to them before 30th November, 1995 with necessary documents relating to effective steps. The said date was extended upto 31.1.1996 vide GR, I&M Department dated 13/2/1997.

Government has received representations from entrepreneurs, Industries Association and I.C. to reconsider and extend the time limit to make application on the ground that some units which had taken effective steps prior to 15.8.1995 and also started commercial production before the specified date could not apply within stipulated time limit of 31.1.1996.

This matter was placed before the High Level Empowered Committee led by the Hon'ble Chief Minister in its meeting dated 15/30.5.2000. On the basis of recommendation of the Committee, the Government has now decided that the time

limit to make application for availing sales tax incentives under incentive policy, 1990-95 should be relaxed. Accordingly all eligible industries units who have complied with conditions of industrial incentive policy, 1990-95 and had taken prescribed effective steps prior to 15.8.1995 should be considered eligible for sales tax incentives if they submit their application latest by the 30th Sept. 2000 and such units are still in production and there is no change in the ownership of the said unit who had applied for availing sales tax incentives.

In respect of the units which are given relaxation under this resolution, the operative period of Sales Tax Incentive shall commence from the date of eligibility certificate issued by the Industries Commissioner/District Industries Centre as the case may be.

The other provision(2) of the relevant GR/GRs issued under the 1990-95 policy will remain the same."

The petitioner has filed rejoinder affidavits.

4. At the hearing of this petition, the learned counsel for the petitioner has submitted that looking to the chronology of events and the Government Resolutions dated 16.10.1990, 9.11.1995 and 17.7.2000, the petitioner Company is eligible for getting registration and eligibility certificate for benefits under the sales tax incentive scheme 1990-95 policy. It is submitted that the Government Resolution dated 9.11.1995 (pg. 243) required the fulfillment of the following conditions for being treated as a pipeline case:-

"(i) The industrial unit should have obtained letter of intent or obtained acknowledgment against filling of IEM before 15.8.95.

(The petitioner fulfilled this condition.)

(ii) The industrial unit shall have obtained possession of plot or shed in GIDC estate before 15.8.1995.

OR

Shall have acquired land transferred in it name

and got it converted for NA use for industrial purpose before 15.8.95

OR

Shall have applied for conversion of agricultural land to NA use before 15.5.95.

(The Petitioner had thus to fulfill any one of the above three conditions. The Assistant Collector had granted permission to the owner of the agricultural land on 20.7.95 to sell the land to the petitioner for industrial purpose and the petitioner had purchased and taken possession of the said land on 7.8.95. It thus fulfilled one of the three conditions mentioned above).

(iii) The industrial unit should have got registration or applied for provisional registration on or before 15.8.1995. The petitioner Company had applied on 1.8.1995 to DIC, Vadodara for this purpose.

(The petitioner had thus fulfilled this condition also).

(iv) The industrial unit with investment above Rs.10.00 crores and upto Rs.100.00 crores should go into commercial production before 15.2.1997.

(Admittedly the petitioner company had started its commercial production w.e.f. 12.2.1997 and it had thus fulfilled this condition also)."

5.0 It is submitted on behalf of the petitioner Company that -

5.1 The objection about the petitioner not having submitted an application for being treated as a pipeline case cannot survive in view of the Government Resolution dated 17.7.2000 (pg. 229) which has extended the time limit upto 30.9.2000.

5.2 As regards the objection about the petitioner not having obtained the N.A. use permission from the TDO by 15.8.1995, it is vehemently submitted by Mr Trivedi for the petitioner that the Assistant Collector, an officer superior to the Mamlatdar and TDO, had already granted permission dated 20.7.1995 permitting the erstwhile owner of the agricultural land to sell the same to the petitioner for industrial use and pursuant thereto, a

registered sale deed was executed in favour of the petitioner and the petitioner Company was put into possession of the said land on 7.8.1985. It is submitted that when the said permission granted by the Assistant Collector on 20.7.1995 specifically noted that the land was permitted to be sold by the erstwhile owner, who was an agriculturist, to the petitioner Company for industrial purposes, it necessarily implied that the petitioner was permitted to use the land in question for non-agricultural purposes and, therefore, merely because a consequential order was not passed by the TDO under Section 65 of the Bombay Land Revenue Code, the petitioner cannot be denied the benefits under the sales tax incentive scheme.

5.3 As regards the objection about the date of commercial production, it is submitted that the petitioner had started commercial production on 12.2.1997 which was within the permissible time limit of 15.2.1997 for the units with investment between Rs.10 crores and Rs.100 crores and, therefore, there was no substance in the said objection also.

6. Mr Trivedi has invoked the doctrine of promissory estoppel for contending that it was on account of the incentive policy as contained in the Government Resolution dated 16.10.1990 that the petitioner had gone in for purchasing the land in question and had also submitted application dated 1.8.1995 well within the time limit for getting registration under the above scheme. The petitioner already having invested crores of rupees by establishing an industry in a backward area, it is not open to the respondent authorities to deny the petitioner registration and eligibility certificate by taking into consideration irrelevant factors and by not considering the relevant facts as stated above.

7. On the other hand, Mr RC Kodekar, learned AGP appearing for the respondent authorities has opposed the petition and submitted as under :-

7.1 As per the Government Resolution dated 9.11.1995, the petitioner was required to submit an application for consideration as a pipeline case and that it was specifically so stipulated in sub-clause (6) contained in the Government Resolution dated 9.11.1995 (pg. 58) which read as under :-

"(6) Units eligible and desiring to avail the Sales tax incentives under Government Resolutions referred to in the preamble at Sr. Nos. 1, 6, 8

& 9 with an extended date to go into commercial production as stipulated above should make an application with the respective District Industries Centres, before 30th November, 1995 with necessary documents relating to effective steps."

It is also submitted that the petitioner did not make any such application by 30.11.1995 or the extended time limit of 31.1.1996. Therefore, the respondent authorities were justified in not entertaining the petitioner's application for considering its case as a pipeline case.

7.2 As regards the N.A. use permission, it was obvious that what was granted by the Assistant Collector on 20.7.1995 was a mere permission for sale of an agricultural land to a non-agriculturist under Section 63 of the Tenancy Act. That permission (Annexure "E" pg. 75) itself provided as under :-

"(1) This permission is granted only under Tenancy Act Section - 63 and Rule - 36. The permission to be taken under any other law has to be taken first.

(2) The Permission under Section 65 of Land Revenue Act has to be obtained within 6 months and proofs have to be presented for the same."

The petitioner did not even apply to the TDO for the requisite permission under Section 65 of the Bombay Land Revenue Code by 15.5.1995 or even by 15.8.1995 and, therefore, the petitioner did not fulfil condition No. 2 stipulated in the Government Resolution dated 9.11.1995.

7.3 The petitioner did not start commercial production before 15.8.1995 which was the date stipulated under the original incentive scheme 1990-95.

8. Having heard the learned counsel for the parties, it appears to us that out of the three grounds which prompted the authorities to reject the petitioner's application for being considered as a pipeline case, one does not at all survive in view of the Government Resolution dated 17.7.2000 which extended the time limit for making applications for consideration as a pipeline case upto 30.9.2000. The petitioner had admittedly made an application for being treated as a pipeline case long back and even the reply dated 23.4.1997 from the

Industries Commissioner would show that the petitioner submitted an application on 14.2.1997 which was being rejected.

9. The stand of the respondent authorities, however, is that in any view of the matter since the petitioner had not applied for, much less obtained, N.A. use permission under Section 65 of the Bombay Land Revenue Code before 15.8.1995, the petitioner's case was not eligible to be treated as a pipeline case under the Government Resolution dated 9.11.1995. It is true that the petitioner had not applied for or obtained the N.A. use permission under Section 65 of the Bombay Land Revenue Code before the said date. However, there is no dispute about the fact that the Assistant Collector, Baroda had already granted permission on 20.7.1995 to the erstwhile owner of the agricultural land permitting him to sell the agricultural land in question to the petitioner for industrial purpose. The permission set out hereinbelow is so worded that no doubt would be left in the mind of any reasonable person that the petitioner could proceed to use the land in question for non agricultural purpose.

Tenancy/Vashi/3640/43/95

Office of Assistant Collector, Narmada Bhavan "C" Block, 6th Floor, Vadodara.

Dt. 20.7.1995

ROUND SEAL OF ASSISTANT COLLECTOR BARODA.

READ :

(1) Application of applicant for sale of land of Block No. 132 H.1.60.54, Cess Rs.11-19 of Mouje Mahuva, Tal. Padra to PanPipes Resplendents Ltd. for non-agricultural industrial use.
(2) Papers of work received vide letter No.Land/Vashi/2371/95 dated 13.7.95 from Mamlatdar, Padra.
(3) Schedule No. Tenancy/4475/82 dated 3.9.1982 of Honourable Collector, Vadodara.
(4) Section 63 and rule 36 of Tenancy Act.

ORDER :

(1) The land of Block No. 132 H.A.P. 1-60-54 Cess Rs.11.19 of mouje Mahuva, Tal. Padra runs in the name of Pradhanben daughter of Pujabhai Parbatbhai in old tenure. They have asked for the permission for selling this land to Panpipes Resplendents Ltd., Vadodara for industrial purpose.

(2) Investigation is done by Mamlatdar, Padra in regard to sale of land. Mamlatdar informs that there is no violation of Fragmentation Act, Land Ceiling Act or any other act. No procedure is going on for acquisition of the land.

(3) The reply of application on the part of seller and Shri Harishbhai S. Parikh on the side of purchaser residing at Vadodara is received in presence at Padra, parties are agreeable for this deal. The account holder former selling land does not have any agricultural land except this land and become non - former which is known to the application and therefore this affidavit is presented.

(4) Mamlatdarshri Padra has recommended to give permission as per Serial No. 2 taken as read. Looking to the reasonable demand of the applicant permission is granted to the applicant for selling land of Block No. 132 H.1-60-54, Cess Rs.11.19 of mouje Mahuva, Ta. Padra for the purpose of non-agriculture use to Panpipes Resplendents Ltd. Vadodara for Industrial purpose subject to following conditions .

CONDITIONS

(1) to (11) xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx

All the above conditions will have to be implemented. In the event of breach of any of the condition, the permission granted shall automatically get cancelled and Proceedings under T.A., Section 84-6 will be taken up.

Sd/-
(S.J. HAIDER)
Assistant Collector, Vadodra

(emphasis supplied)

To :

(1) Pradhanben, ...
(2) Panpipes Resplendents Ltd., ...
(3) Copy forwarded to mamlatdarshri, Padra
for entry in village Record.

A perusal of the above order reveals that before the Assistant Collector granted the permission under Section 63 of the Tenancy Act, the Mamlatdar, Padra had already carried out investigation and had ascertained that there was no violation of the Fragmentation Act, Land Ceiling Act or any other Act and no procedure was going on for acquisition of the land nor was any mortgage entered on the said land. Now these are also the considerations which are being taken into account by the authorities considering the application under Section 65 of the Bombay Land Revenue Code. This was also put to the learned AGP and he was unable to contend that if the application under section 65 of the Bombay Land Revenue Code had been made immediately after receiving the permission dated 20.7.1995, there was any ground for rejecting such an application

In any view of the matter, it is an admitted position that the petitioner did obtain the N.A. use permission from the TDO, Padra under Section 65 of the Bombay Land Revenue Code on 9.5.1996 (pg. 78) which was also granted subject to certain conditions.

In the above view of the matter, we are of the view that the objection raised by the authorities that the petitioner's case could not be considered as a pipeline case because the N.A. use permission under Section 65 of the Bombay Land Revenue Code was not obtained before 15.8.1995 cannot be permitted to come in the way of the petitioner's case being considered as a pipeline case.

10. The object of the Resolution dated 9.11.1995 stipulating the effective steps is also required to be considered. The Government was considering the representations of the entrepreneurs who had initiated the process for establishing their industries by

investing their funds in backward areas and they could not have been expected to leave the project midstream after making those investments. In our view, therefore, since the petitioner had already purchased the land in question before 15.8.1995 after getting the permission dated 20.7.1995 from the Assistant Collector, Vadodra for purchasing the agricultural land from an agriculturist for industrial use, the petitioner's case could not have been rejected as a pipeline case merely because the permission under Section 65 of the Bombay Land Revenue Code was not obtained by the petitioner before 15.8.1995 which was in any case obtained by the petitioner by 9.5.1996.

11. The last objection is about the date of commencement of production. The petitioner's case is that since the proposed cost of the project was Rs.12,89 crores as stated in the application dated 1.8.1995 and the cost was revised to Rs.19.50 crores as per the letter dated 14.8.1995, the petitioner was entitled to get the extension of the time limit for commercial production upto 15.2.1997 which has the date for the units with investment of Rs.10 crores and upto Rs.100 crores. There is no dispute about the fact that the unit started commercial production on 12.2.1997. In this connection, we would reproduce clause (4) of the Government Resolution dated 9.11.1995 :-

"(4) All industrial units which have taken "effective steps" as prescribed in para 3 above will be treated as "Pipeline Cases" and allowed to avail Sales tax incentive under Government Resolution mentioned in the preamble at Sr. No. (1) to (10) (except Government Resolution at Sr.No. 7) provided such units go into commercial production on or before the dates indicated below :-

(i) Units with investment
upto Rs.10 crores 15.08.1996

(ii) Units with investment
above Rs.10 crores and
upto Rs.100 crores 15.02.1997

(iii) Units with investments
above Rs.100 crores and
upto Rs.300 crores 15.08.1997

(iv) Units with investments

more than Rs.300 crores 15.02.1998

(Investment for the above purpose means the total project cost, excluding working capital margin)

It appears that the slab between Rs.10 crores and Rs.100 crores referred to the total project cost, excluding working capital margin and that would not necessarily mean the actual investment made till the date of commencement of commercial production. In the facts and circumstances of the present case, the projected cost of the project was revised from Rs.12.89 crores to Rs.19.50 crores but the actual investment for the project till the date of commencement of commercial production i.e. 12.2.1997 was only Rs.8.30 crores as per the petitioner's own case. We are, therefore, of the view that although the petitioner's case would fall in category (ii), (i.e. units with investment above Rs.10 crores and upto Rs.100 crores), considering the fact that there has been some delay on the part of the petitioner in approaching this Court for challenging the decisions taken by the respondent authorities in the year 1997, we would like to make it clear that the investment qualifying for benefits under the sales tax incentive scheme shall be limited to the amount of Rs.8.30 crores and that consideration of the petitioner's case will also be subject to scrutiny regarding compliance of the other terms and conditions under the relevant Government Resolutions including Government Resolution dated 16.10.1990. All that we are directing the respondent authorities to do is to consider the petitioner's case as a pipeline case as contemplated by the Government Resolution dated 9.11.1995.

12. We would also like to note that there has been some delay on the part of the petitioner in challenging the decision of respondent No. 2 which was taken in April, 1997 and reiterated in July and August, 1997. Still the petitioner went on making representations to the authorities and did not institute any proceedings in a Court of Law for claiming necessary reliefs. However, considering the fact that the petitioner had already purchased the land in July-August, 1995 and had proceeded to construct the factory and to purchase and install the necessary plant and machinery so as to commence the commercial production by 12.2.1997, it was within the stipulated time limit for commercial production and, therefore, we are directing the respondent authorities to consider the petitioner's case as a pipeline case, but at

the same time considering the fact that the petitioner did not challenge the impugned decision taken in April 1997 within a reasonable time, we are directing the respondent authorities that even if the petitioner is found to be eligible for grant of the sales tax incentives under the aforesaid scheme, the same shall be confined to the amount of Rs.8.30 crores made by the petitioner till commencement of commerical production.

13. We further make it clear that the delay is a relevant factor also for considering that even if the petitioner is considered to be eligible for the sales tax incentives, by this judgment the petitioner may not be considered to be entitled to get any cash subsidy from the Government because the scheme of cash subsidy is evolved for giving aid to the nascent industries for getting on to their feet. The petitioner having already been in commercial production for the last about 4 years, in the exercise of our extraordinary jurisdiction, we think, we would be justified in observing that the benefits being granted under this judgment may not be permitted to be invoked for any claim of cash subsidy.

14. We would also like to make it clear that whatever amounts the respondent authorities under the Sales Tax Act have recovered from the petitioner by now, are not required to be refunded to the petitioner Company, but the same may be adjusted against the dues which are required to be paid by the petitioner after the petitioner's case is considered as a pipeline case covered by the Government Resolution dated 9.11.1995.

15. In view of the above, the petition is allowed. The impugned decisions contained in the letters dated 23.4.1997, 21.7.1997 and 19.8.1997 of respondent Nos. 2 and 3 (Ann. H colly.) are quashed and set aside and respondent Nos. 1 to 3 are directed to consider the petitioner's case as a pipeline case covered by the Government Resolution dated 9.11.1995 and to consider the petitioner's application for registration and eligibility certificate under the sales tax incentive scheme for industries 1990-95 in accordance with law and in light of the observations made in this judgment as expeditiously as possible and within two months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

16. We make it clear that all that we have directed respondent Nos. 1 to 3 to do is to examine the petitioner's case as a pipeline case. We have not gone into the examination of merits of the petitioner's

application which shall have to be done in accordance with the relevant Government Resolutions, but after proceeding on the basis that the petitioner's case is covered by the Government Resolution dated 9.11.1995.

We further direct that in case the petitioner is granted the eligibility and registration certificate under the above scheme, the petitioner shall be granted the sales tax incentive on the investment only upto Rs.8.30 crores upto 12.2.1997, subject to verification by the authorities of the amount claimed to have been invested till then.

We also make it clear that we are not issuing any direction to the authorities for granting the petitioner any benefit of cash subsidy.

17. Rule is made absolute to the aforesaid extent with no order as to costs.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

sundar/-